

2022

White Silence and Violence: Positionality and Storytelling in Women's Rights Movements

Inka Boehm

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/hrbrief>



Part of the [Law and Gender Commons](#)

Recommended Citation

Inka Boehm (2022) "White Silence and Violence: Positionality and Storytelling in Women's Rights Movements," *Human Rights Brief*. Vol. 26: Iss. 1, Article 1.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol26/iss1/1>

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Human Rights Brief by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

WHITE SILENCE AND VIOLENCE: POSITIONALITY AND STORYTELLING IN WOMEN'S RIGHTS MOVEMENTS

by Inka Boehm*

I. INTRODUCTION

Our identity impacts everything about how we move through the world as individuals. In the legislative process, identity is often disregarded but has detrimental effects if ignored. Positionality describes how society shapes identities through power and privilege. This methodology requires researchers to analyze their world with their own privileges in mind and is often overlooked by policymakers.¹

Storytelling, personal identity, and positionality matter in how we craft our perceptions of what needs fixing. Legislators must consider their own identities when crafting policies meant to help the public. Despite being the most racially and ethnically diverse in U.S. history, seventy-seven percent of the 117th Congress is white. With only sixty percent of the U.S. population being white, there is a clear lack

* Inka Skłodowska Boehm (WCL '22) is a reproductive justice advocate with an international human rights perspective. She served as a student attorney for the International Human Rights Law Clinic, advocating for clients facing capital punishment and deportation. She is an optimistic abolitionist and hopes to work within intersectional movements for reproductive liberation.

1 *Positionality & Intersectionality*, INDIGENOUS INITIATIVES CTLT, <https://indigenousinitiatives.cltl.ubc.ca/classroom-climate/positionality-and-intersectionality/> (last visited Oct. 26, 2020).

of adequate representation.² While this article will not dive into factors contributing to disproportionate representation, recognizing politicians who keep their seats because of disenfranchisement and voter suppression tactics is imperative.³

With the politicization of identity and a misunderstanding by certain members about what “checking your privilege” means, legislative research positionality may appear to be contentious. Every legislator acknowledging their own biases and experiences is a lofty goal, but Congress has a precedent including diverse voices and narratives. The Violence Against Women Act (VAWA) brought activists with conflicting or conflated goals together in a piece of legislation attempting to address different communities’ problems. This equal representation and positionality allow legislators and legal professionals to shift dominating narratives and make effectual changes in line with the actual needs of underrepresented communities.

This Article uses the VAWA as a case study to understand how individuals researching, writing, and implementing legislation must take positionality into account. Part II provides background on VAWA and efforts geared toward the Missing and Murdered Indigenous Women (MMIW) epidemic. It then contextualizes both critical race feminist and tribal critical race theory. Part III analyzes ways research positionality could benefit and improve upon VAWA, and the idea of intersectionality and conflicting goals within the feminist movement. Part IV concludes the Article.

2 Katherine Schaeffer, *Racial, Ethnic Diversity Increases Yet Again with the 117th Congress*, PEW RSCH. CTR. (Jan. 28, 2021), <https://www.pewresearch.org/fact-tank/2021/01/28/racial-ethnic-diversity-increases-yet-again-with-the-117th-congress/>.

3 Jean Chung, *Felony Disenfranchisement: A Primer*, THE SENT’G PROJECT (Jan. 2017), <https://static1.squarespace.com/static/591efd8ec534a5abb5117718/t/5aba9a1daa4a99d1acfbdbb3/1522178621662/Felony-Disenfranchisement-Primer.pdf>.

II. BACKGROUND

A. The History of VAWA

VAWA marks the first federal policy attempting to address all types of gender-based violence.⁴ President Biden stated the bill's goals are "to make streets safer for women; to make homes safer for women; and to protect women's civil rights."⁵ Following the steady rise in violent crime rates in the 1960s, grassroots organizations began lobbying for a change in how both public policy and law enforcement approached violence against women. As the criminal justice system began to recognize domestic violence as a crime, the issue gained more traction and culminated in the Family Violence Prevention and Services Act. With the foundation laid, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994 into law, with VAWA under Title IV.⁶

VAWA's major features when it first debuted were the enhancement of how sex offenses were dealt with, the establishment of certain immigration provisions to allow for immigrants to not be dependent on their abuser, and grant programs for combatting violence against women.⁷ Subsequently, the four reauthorizations incorporated evolving concerns. In an anti-trafficking initiative, the 2000 reauthorization included protections for battered nonimmigrants, new educational programming funds, and programs designed to protect elderly disabled women.⁸ The 2005 VAWA emphasized collaboration between community and local law enforcement, while also introducing programs for Native victims.⁹

⁴ Lea Hunter, *Congress Must Reauthorize, Expand, & Improve VAWA in 2019*, CTR. FOR AM. PROGRESS (May 8, 2019), <https://www.americanprogress.org/issues/criminal-justice/news/2019/05/08/469082/congress-must-reauthorize-expand-improve-vawa-2019/>.

⁵ Emily S. Rueb & Niraj Chokshi, *The Violence Against Women Act Is Turning 25. Here's How It Has Ignited Debate*, N.Y. TIMES, (Apr. 4, 2019), <https://www.nytimes.com/2019/04/04/us/violence-against-women-act-reauthorization.html>.

⁶ H.R. REP. NO. R45410, at 2 (2019).

⁷ *Id.*

⁸ *Id.* at 15-16.

⁹ *Id.* at 16.

Until 2013, VAWA received bipartisan support.¹⁰ The support changed when conservative groups such as the Family Research Council began urging legislators to vote against the reauthorization. Opposition to the innocuous reauthorization came from fears the law would infringe on privacy and "represented a 'feminist' attack on family values."¹¹ Christina Villegas, a visiting fellow at the Independent Women's Forum explained "VAWA provides so much funding [based on the model that violence against women is a product of sexism and patriarchy] that could be so much more effective if it focused on proven causes of violence."¹² Certain grants through the Act encouraged counterintuitive policies. For example, 'mandatory arrest' led to victims refraining from reporting abuse for fear of their abuser's arrest.¹³ VAWA 2013 also addressed flaws in the judicial system that made it nearly impossible to hold non-Native men accountable for violence against Native women.¹⁴ The bill restored tribal courts' jurisdiction to try such cases when domestic violence and dating violence are committed on tribal lands.¹⁵

The 2013 reauthorization signaled struggles to come. In 2019, the House passed its reauthorization despite Republican pushback on provisions protecting transgender people and prohibiting individuals with certain misdemeanor convictions from purchasing firearms.¹⁶ The 'boyfriend loophole' drew the attention of the notoriously heavy-hitting

¹⁰ *Id.* at 15.

¹¹ Molly Ball, *Why Would Anyone Oppose the Violence Against Women Act?*, THE ATLANTIC (Feb. 12, 2013), <https://www.theatlantic.com/politics/archive/2013/02/why-would-anyone-oppose-the-violence-against-women-act/273103/>.

¹² *Id.*

¹³ *Id.*

¹⁴ U.S.: *Violence Against Women Act Renewed*, HUM. RTS. WATCH (Feb. 28, 2013), <https://www.hrw.org/news/2013/02/28/us-violence-against-women-act-renewed>.

¹⁵ *Id.* (noting that previously the federal government had jurisdiction over such crimes but often did not prioritize these misdemeanor offenses).

¹⁶ Ashley Killough, *House Passes Reauthorization Passes Reauthorization of Violence Against Women Act*, CNN (Apr. 4, 2019, 2:59 PM), <https://www.cnn.com/2019/04/04/politics/house-passes-violence-against-women-act-reauthorization/index.html>.

gun lobby, the National Rifle Association.¹⁷ The hurdles of opposing parties' priorities, a contentious election, and a pandemic delayed the necessary consensus until the 2022 reauthorization.¹⁸

B. Addressing the Missing and Murdered Indigenous Women epidemic through VAWA and Tribal Critical Race Theory

Journalist Nick Martin describes the MMIW epidemic as “Patterns of violent men and extractive industries breezing through land they do not own to take lives that do not belong to them . . . Patterns of government officials . . . ignoring practical, sovereignty-first reforms and instead hoarding the kind of power that keeps the crisis alive.”¹⁹ This interconnection of tribal, environmental, and criminal law is consistently overlooked by policymakers. By focusing on the carceral implications of violence against women, legislators create one-note solutions to a multi-dimensional problem.

Throughout its history, VAWA's reauthorizations included protections codified as “Safety for Native Women.” The U.S. government finally addressed the ongoing MMIW crisis with a bill known as “Savanna's Act”²⁰ and, surprisingly, an executive order signed by President Donald Trump.²¹ North

¹⁷ *Id.*

¹⁸ Christina Thomas, *Stop the Delays: The Senate Must Pass 2021's Violence Against Women Reauthorization Act*, NAT'L COUNCIL OF JEWISH WOMEN (Dec. 17, 2021), <https://www.ncjw.org/news/senate-must-pass-vaawa-2021/>.

¹⁹ Nick Martin, *The Cyclical Crisis of Missing and Murdered Indigenous Women*, THE NEW REPUBLIC (Jan. 22, 2020), <https://newrepublic.com/article/156263/cyclical-crisis-missing-murdered-indigenous-women>.

²⁰ Named for Savanna Lafontaine-Greywind, a 22-year-old Spirit Lake Tribe member and mother who was murdered by a non-Native man. Notably, the provisions of “Savanna's Act” were criticized for not being sufficient to protect her, as it did not include urban women. See Jenni Monet, *A Native American Woman's Brutal Murder Could Lead to a Life-saving Law*, THE GUARDIAN (Mar. 2, 2019), <https://www.theguardian.com/us-news/2019/may/01/savanna-act-native-women-missing-murdered>.

²¹ Exec. Order No. 13,898, 84 Fed. Reg. 66,059 (Dec. 2, 2019) (establishing a Task Force on Missing and Murdered American Indians and Alaska Natives).

Dakota State Representative Ruth Buffalo noted a lack of Native representation regarding how both the Office on Violence Against Women and the Office for Victims of Crime work on domestic violence, sexual assault, stalking, dating violence, and human trafficking, stating that failure to include precise MMIW language furthers the crisis.²²

Tribal sovereignty and easy access to information held by certain federal agencies, such as information from the National Criminal Information Center (NCIC), is a critical issue. Mary Kathryn Nagle, attorney and citizen of the Cherokee Nation of Oklahoma, testified, “The disproportionate statistics among American Indian and Alaska Native (AI/AN) women combined with the on-going missing and murdered reports across Indian country, the lack of NCIC access for Tribes and other related barriers to safety fuel our on-going work around this critical issue.”²³

1. Tribal Critical Race Theory

The historically white U.S. government made the official and legal term for Indigenous Peoples ‘American Indians,’ basing the term on a genocidal colonizer's inability to navigate and not on actual Indigenous communities.²⁴ Professor and enrolled member of the Mandan, Hidatsa, and Arikara tribes, Michael Yellow Bird delves into the array of preferences within the Native community. Some prefer ‘American Indian’ fearing identifying otherwise will eliminate what resources the federal government promised through treaties, as it is the “legal” term.

²² *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women: Exploring Solutions to End the Cycle of Violence Before the Subcomm. On Indigenous Peoples of the United States of the H. Comm. on Natural Resources*, 116th Cong. 14-16 (Mar. 2019) (statement of North Dakota State Representative Ruth Buffalo).

²³ *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women: Exploring Solutions to End the Cycle of Violence Before the Subcomm. On Indigenous Peoples of the United States of the H. Comm. on Natural Resources*, 116th Cong. 20 (Mar. 2019) (Written Testimony of Mary Kathryn Nagle, National Indigenous Women's Resource Center).

²⁴ Michael Yellow Bird, *What We Want to be Called: Indigenous Peoples' Perspectives on Racial and Ethnic Identity Labels*, 23 AM. INDIAN Q. 1, 4 (1999).

Others prefer “Indigenous Peoples” or “First Nations Peoples,” identifying them as descendants of the first inhabitants of the Americas without giving power to the names of colonizers.²⁵ The social, cultural, and political diversity of Indigenous Peoples must be recognized, respected, and acknowledged by language. Mainstream media and the federal government seem unreceptive to the concept of an individual’s or group’s preferring one label or combination of labels. This disconnect further harms the narrative surrounding Tribal issues.²⁶

In his work on Tribal Critical Race Theory, Dr. Bryan McKinley Jones Brayboy creates a framework to address the relationship between Indigenous Peoples and the U.S. government.²⁷ Tribal Critical Race Theory (TribalCrit), in contrast to other sub-theories focusing on racism being “endemic in society,” centers on colonization.²⁸ Brayboy’s proposed nine tenets of TribalCrit address how U.S. policies towards Indigenous Peoples are “rooted in imperialism, white supremacy, and a desire for material gain.”²⁹ Colonization and racism forced assimilation upon Indigenous Peoples. TribalCrit also notes the liminality of Indigenous Peoples within the United States as being both “legal/political and racialized beings.” The focus on the latter identification ignores how colonialism impacted the status of Indigenous people.

Tribal sovereignty and the protection of Native women are completely intertwined. Sovereignty allows tribes to claim an independent identity and citizenship. The U.S. Bureau of Indian Affairs describes the federal Indian trust’s responsibility as a “legally enforceable fiduciary obligation on the part of the United States to protect tribal rights, lands, assets, and resources.”³⁰ Tribal and Pueblo

²⁵ *Id.*

²⁶ *Id.*

²⁷ Bryan McKinley & Jones Brayboy, *Toward a Tribal Critical Race Theory in Education*, 37 *THE URBAN REV.* 425, 429-30 (Mar. 2006).

²⁸ *Id.*

²⁹ *Id.* at 429.

³⁰ *Frequently Asked Questions*, BUREAU OF INDIAN AFFAIRS, <https://www.bia.gov/frequently-asked-questions> (last visited Nov. 30, 2020).

governments have a range of powers unless limited by particular treaties. In most cases, crimes involving a non-Native perpetrator and a Native victim result in state or federal, not tribal jurisdiction.³¹

2. *Savanna’s Act and the Inclusion of the Native Narrative*

In a major victory for Native women and activists, Congress passed legislation to improve tribal access to certain crime information databases, create Tribe-guided response protocols to cases of missing and murdered Indigenous women, and require annual reports to Congress on statistics regarding the MMIW epidemic. Savanna’s Act also created a taskforce to ensure proper coordination between the FBI, U.S. attorneys, tribal police, BIA police, and state police.³² In short, the act will improve how these cases are investigated and handled in court.³³ However, deeply ingrained issues regarding sovereignty and jurisdiction continue to be an additional hurdle for justice.

The victories of Savanna’s Act and further inclusion of Indigenous issues in the VAWA resulted from decades of work to push Native women’s stories into mainstream media. That success is due to the Native activists and legislators involved. Deb Haaland and Sharice Davids, the first Native Congresswomen, assumed office in 2019, drawing the attention of fellow politicians, activists, and, most importantly, the media.³⁴ Representative Haaland notably called out Representative Sensenbrenner for excluding provisions regarding Native women: “For any congressional leaders to attempt to take away protections for not only women but Indigenous

³¹ *General Guide to Criminal Jurisdiction in Indian Country*, TRIBAL L. POL’Y & POL’Y INST., <https://www.tribal-institute.org/lists/jurisdiction.htm> (last visited Nov. 30, 2020).

³² Savanna’s Act, S.227, 116th Cong. (2020).

³³ Maureen Pao, *Savanna’s Act Addresses Alarming Number Of Missing Or Killed Native Women*, NPR (Sept. 28, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/28/917807372/savannas-act-addresses-alarming-numbers-of-missing-or-murdered-native-women>.

³⁴ In 2022, Deb Haaland became the United States Secretary of the Interior, marking the first time an Indigenous person held the office governing largely Indigenous issues.

women, at a time when we are just beginning to understand how deep-rooted and serious of an issue the severe lack of protections are for Native women, is an abomination.”³⁵ Sensenbrenner claimed the provisions would strip non-Native abuser’s constitutional rights in incompetent tribal courts.³⁶ Haaland spoke to this concern noting that tribes are sovereign nations with their own laws, and no habeas-corpus petitions relating to constitutional violations have come out following the 2013 provisions.³⁷ In doing so, Haaland took back the commonly spun narrative of tribal courts’ and governments’ incompetence. Had there not been a Native congress member present, the issue would never have been raised.³⁸ The increased Native representation in politics directly resulted in the most recent iteration of VAWA, which expands Tribal courts’ special jurisdiction over non-Native perpetrators.³⁹

C. Critical Race Feminism Frameworks

1. Interest Convergence

As one of the foundational theories of critical race theory, interest convergence plays an essential role in analyzing legislation. Using the case of *Brown v. Board of Education*, Professor Derrick Bell illustrates how Black people achieve civil rights victories only when white people’s interests are also served. The United States finally addressed segregation in the landmark case so other nations would look down on its Soviet enemy. However, enforcement of *Brown* fell by the wayside as soon as white interests were no

35 Jennifer Bendery, *Deb Haaland Shames GOP for Trying to Strip Protections from Abused Native Women*, HUFFINGTON POST (Mar. 15, 2019, 12:53 PM), https://www.huffpost.com/entry/deb-haaland-violence-against-native-women_n_5c8bbc91e4b0d7f6b0f2c613.

36 *Id.*

37 *Id.*

38 *Id.*

39 See *2013 and 2022 Reauthorizations of the Violence Against Women Act*, DEPT. OF JUST. (Sept. 20, 2022), <https://www.justice.gov/tribal/2013-and-2022-reauthorizations-violence-against-women-act-ava#:~:text=This%20expanded%20recognition%20of%20Tribal,Biden%20on%20March%2015-%2C%202022.>

longer served.⁴⁰

White feminism has long held the reins of women’s rights movements in a convenient display of interest convergence. From the suffragist movement to the co-opting of Tarana Burke’s #MeToo, white women take action when serving their own interests but neglect major issues within traditionally marginalized communities.⁴¹ White feminism has gone as far as to capitalize off women of color. For example, true crime podcasters, who tend to only cover white victims, romanticize white serial killers, and ignore the disappearance rates in Black, Latina, and Indigenous communities, encourage harmful misconceptions of criminal justice while profiting off trauma.⁴² These podcasters write off commentary, such as “Unfortunately, he died of cancer in a prison hospital instead of being fried” as dark humor, disregarding the power they have.⁴³ This perpetuation of carceral feminism, which advocates for harsher prison sentences and punishment for crimes associated with gender-based violence, refuses to acknowledge the discrepancy of hyper-incarceration harming Black women.

2. Intersectionality

Leading critical race theory scholar and lawyer Kimberlé Crenshaw’s coinage of the term ‘intersectionality’ came when the feminist anti-violence movement began gaining traction.⁴⁴ The anti-violence movement has converging interests between white and Black women, as well as other marginalized communities. Crenshaw addresses the

40 See generally Derrick A. Bell, *Brown v. Board of Education and the Interest Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

41 Caitlin B. Mininger, *A Crossroads in Time: The Implications of Intersectionality and #MeToo for Sexual Harassment Law*, 12 DREXEL L. REV. 651, 651 (2020).

42 See Elon Green, *The Enduring, Pernicious Whiteness of True Crime*, THE APPEAL (Aug. 21, 2020), <https://theappeal.org/whiteness-of-true-crime/>.

43 Andrea DenHoed, *The “My Favorite Murder” Problem*, CRITICAL MASS (Nov. 22, 2019), <https://newrepublic.com/article/155801/favorite-murder-problem>.

44 Mimi E. Kim, *VAWA @ 20: The Mainstreaming of the Criminalization Critique: Reflections on VAWA 20 Years Later*, 18 CUNY L. REV. 52 (2014).

rise of ‘identity politics’ by suggesting a framework that does not erase differences to unite in a single front. Intersectionality shows how race, gender, class, disability, immigration status, sexuality, etc. can structure the experience of how people navigate oppressive structures.⁴⁵ Crenshaw focuses on identities work together: being a woman of color tends to correlate with poverty and disparate access to resources than typically available to battered white women in a more affluent class.⁴⁶ Intersectionality acknowledges how women of color are forced to choose between two politicized identities with frequently opposing goals.⁴⁷

3. *Anti-Essentialist Feminist Legal Theory*

Prominent feminist legal theorists Catharine MacKinnon and Robin West were famously criticized for what legal scholar Angela Harris calls gender essentialism.⁴⁸ In her critique, Harris highlights how the use of a collective voice erases marginalized women’s experiences. Black women particularly are ignored by mainstream feminism. Thus, gender essentialism does not challenge the “abstract and unitary voice” of the law.⁴⁹

Anti-essentialism acknowledges how racism, ableism, classism, sexism, and other forms of oppression work in conjunction to craft identities.⁵⁰ When feminism claims to hold one voice, it erases the nuanced realities of the very people it purports to serve. Women’s experiences cannot be analyzed through a single lens, nor can they be told through one.⁵¹ Women in the position of power are the ones who tell the stories, and, overwhelmingly, they are white.

⁴⁵ See generally Kimberlé W. Crenshaw, *Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990).

⁴⁹ See *id.*

⁵⁰ See *id.*; See also Lori D. Patton & LaWanda W. Ward, *Missing Black Undergraduate Women & the Politics of Disposability: A Critical Race Feminist Perspective*, 85 J. OF NEGRO EDUC. 330 (2016).

⁵¹ Harris, *supra* note 48 at 595-98.

Harris goes on to describe how nuanced approaches to essentialism, such as qualifying statements to generalizations about ‘all women’ furthers the process of othering. Proclaiming an essentialist feminist ideal and acknowledging it does not fit all women’s experiences in a footnote does not qualify as full representation.⁵²

III. ANALYSIS

A. Diverging Interests and Carceral Frameworks

VAWA began out of concern for women in one collective voice but came at a time when only two Senators were women, both of whom were white.⁵³ Following the initial VAWA, the policy regarding domestic violence became ‘more policing and punishment,’ disregarding the consequences of more policing in Black and brown communities. Frequently, officers responding to 911 calls about domestic violence or sexual assault either ignored procedure or brutalized the caller. The white VAWA lobbyists looked the other way, ignoring the implications of their policymaking.⁵⁴

Interest convergence rears its head in many feminist movements. The mainstream rhetoric surrounding sex and gender-based violent crime ignores those calling for the abolition and defunding of police. Forms of mainstream media romanticize and normalize procedures like the death penalty, despite the United States being the only western industrialized nation practicing capital punishment.⁵⁵ Institutional violence against women is frequently framed as the assault on bodily autonomy and a

⁵² See *id.*

⁵³ Emma Green, *A Lot Has Changed in Congress Since 1992, the ‘Year of the Woman’*, THE ATLANTIC (Sept. 26, 2013), <https://www.theatlantic.com/politics/archive/2013/09/a-lot-has-changed-in-congress-since-1992-the-year-of-the-woman/280046/>.

⁵⁴ See Victoria Law, *Against Carceral Feminism*, JACOBIN MAG. (2014), <https://www.jacobinmag.com/2014/10/against-carceral-feminism/>.

⁵⁵ *Death Penalty in 2019: Facts & Figures*, AMNESTY INT’L (Apr. 2020), <https://www.amnesty.org/en/latest/news/2020/04/death-penalty-in-2019-facts-and-figures/#:~:text=Trinidad%20and%20Tobago%20was%20the,US%20decreased%20compared%20to%202018.>

women's right to choose. The narrative does not consider police brutality as yet another form of violence against Black and Brown communities.⁵⁶ White and carceral feminism boast the attributes of allyship without addressing alternative and abolitionist approaches to preventing sex and gender-based violence.⁵⁷

Hyper-incarceration of disenfranchised communities of color is both a product of and a catalyst for violence against women. Over-criminalization began in near conjunction with the public movement against domestic violence.⁵⁸ The original VAWA was part of a bill that included increased funding for new prisons, authorized the death penalty for additional crimes, and imposed life sentences for federal offenders with three violent prior convictions.⁵⁹ VAWA's proponents emphasized an approach focusing on the individual victims of the crime, instead of on how structural inequalities and the programs allegedly intended to combat those inequalities may lead to individuals being more vulnerable to or more likely to use violence.⁶⁰

Despite recent attempts to address those inequalities, the Act disregards the perpetuation of violence against women by the state. While the 2013 Reauthorization required immigration detention facilities to abide by the same standards as prisons related to rape and sexual assault in custody, no provision addresses state-perpetrated violence against women.⁶¹

VAWA's narrow focus is partially a result of its bipartisan nature. Right-leaning congress members are less likely to support legislation addressing

⁵⁶ See Jessica Watters, *Pink Hats & Black Fists: The Role of Women in the Black Lives Matter Movement*, 24 WM. & MARY J. WOMEN & L. 199, 203-04 (2017).

⁵⁷ See generally Deborah M. Weissman, *Law, Social Movements, & the Political Economy of Domestic Violence*, 20 DUKE J. GENDER L. & POL'Y 221, 229-32 (2013).

⁵⁸ See Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. MIAMI RACE & SOC. JUST. L. REV. 585, 591 (2015).

⁵⁹ *Id.* at 592.

⁶⁰ *Id.* at 592-93.

⁶¹ VAWA Reauthorization of 2013, Pub. L. No. 113-4.

shackling inmates in labor, family separation, and police murdering Black women in their sleep.⁶² Reconciling tenets of the police and prison abolitionist movement with justice is difficult, and cannot be done with an essentialist perspective. This conflict illustrates a major problem in how laws are created and enforced. Laws rarely incorporate intersectionality and legislators fail to consider consequences of ignoring such frameworks. VAWA ignored the prison abolitionist framework, focusing instead on what legislators believed to be the typical individual's struggles with violence.

B. Storytellers Matter

While diversity alone cannot eradicate the problems of systemic racism, it has value. In media, education, or politics, diversity of experience and identity creates not only a richer narrative but a stronger one. Without diversity, societal knowledge can and has easily taken on racist perspectives as fact.⁶³ Equal representation in places of power also allows for sharing necessary information and stories. As media consumers, we assume we have access to all relevant news when in reality many voices are overshadowed and ignored.⁶⁴ In Canada, the many missing and murdered Indigenous women rarely make headlines, despite the pervasiveness of the issue. Even within Indigenous communities, narratives overlook certain identities. Two-Spirit individuals, for example,

⁶² See generally, Ashley Southall, *She Was Forced to Give Birth in Handcuffs. Now Her Case Is Changing Police Rules*, N.Y. TIMES (July 3, 2019), <https://www.nytimes.com/2019/07/03/nyregion/nypd-pregnant-women-handcuffs.html>; Priscilla Alvarez, *Family Separation & the Trump Administration's Immigration Legacy*, CNN (Oct. 7, 2020), <https://www.cnn.com/2020/10/07/politics/trump-family-separation/index.html>; Richard A. Oppel Jr., Derrick B. Taylor, & Nicholas Bogel-Burroughs, *What to Know About Breonna Taylor's Death*, N.Y. TIMES (Oct. 30, 2020), <https://www.nytimes.com/article/breonna-taylor-police.html> (describing the state's bare minimum effort toward accountability and reform in the wake of Breonna Taylor's murder).

⁶³ See generally Mitsunori Misawa, *Queer Race Pedagogy for Educators in Higher Education: Dealing with Power Dynamics & Positionality of LGBTQ Students of Color*, 3 INTL. J. OF CRITICAL PEDAGOGY 26 (2010).

⁶⁴ Lisa Schnitzler, *Bringing Her to the Front Page: An Analysis in Women's Representation in Canadian Media*, 3 AB-ORIGINAL 143, 144 (2019).

may be cut off from their Native communities by assimilating with white LGBT+ culture.⁶⁵ The old news adage ‘if it bleeds, it leads’ depends on who is bleeding and who is reporting.⁶⁶

Counter-storytelling and positionality have an important role in academic contexts, particularly in terms of research.⁶⁷ That usage must be expanded into the legal profession, including law making. Angela Harris wrote that in an attempt to evade “the social and moral irresponsibility of the first voice, legal thinkers have veered . . . toward the safety of the second voice, which speaks from the position of ‘objectivity’ rather than ‘subjectivity.’”⁶⁸ So often the legal profession awards objectivity, and in encouraging such passivity, we uphold the systems of oppression.

C. Recommendations, Solutions, & Shifting Narratives

Objectivity in the law is rewarded. Questioning the system from within is frowned upon. Most legal professionals craft their identity to stick to the status quo.⁶⁹ Similarly, legislators separate their personal and political identities for electability’s sake. Putting aside personal identity allows for politicians to focus on the needs and wants of their constituents. However, self-assessing their personal identities and privileges in conjunction with constituent desires may allow for a more inclusive beginning for legislation.⁷⁰

In addition to being aware of one’s own positionality, understanding the intersections of identities in

65 *Walking in Two Worlds: Supporting the Two Spirit and Native LGBTQ Community*, MINN. TWO-SPIRIT SOCIETY (2009), <https://tribalinformationexchange.org/files/resources/twospiritbrochure.pdf>.

66 Schnitzler, *supra* note 65, at 145 (citing K. Gilchrist).

67 Misawa, *supra* note 63 at 33.

68 Harris, *supra* note 48 at 583.

69 Devon W. Carbado & Mitu Gulati, *Working Identity*, in *CRITICAL RACE THEORY* 223, 225 (Richard Delgado & Jean Stefancic eds., 2013).

70 See generally Kate Seymour, *Politics & Positionality: Engaging with Maps of Meaning*, 34(3) *SOC. WORK EDUC.*, 275-285 (2015).

the people legislators represent allows for better legislation. Angela Harris asks for identity be seen as a “both-and” not an “either or.”⁷¹ A layered identity changes within different contexts.⁷² Essentialist feminists boil women’s experiences down into a singular essence. Legislators consume this message and legislate around the notion of that fixed general identity. Promoting a post-essentialist feminist framework focusing on relationships allows for impactful legislation without further harming marginalized and disenfranchised communities.⁷³

Post-essentialist feminism is becoming more mainstream, demonstrated by the word “intersectionality” making its way into social media, protest signs, and news articles.⁷⁴ Yet the politicization of identity continues to make it difficult for the framework to fully present itself in the legislation-making process. One means of bypassing this hurdle would be simply to have accurate representation of the proverbial “Melting Pot.” This method is easier in theory, considering the systemic disenfranchisement and voter suppression targeting Black, Latina, and Indigenous communities.⁷⁵ Elected officials must keep their positionality in mind when navigating legislative spaces. Yet in a country with a heavy bi-partisan divide and where the very idea of having privilege comes off as a personalized attack, the necessary changes will not happen over Election Night.⁷⁶

Feminism’s goal has been to unite women in a common experience in an effort towards establishing equality. This goal dangerously supports a sexist

71 Harris, *supra* note 48 at 604.

72 *Id.* at 611.

73 See *id.* at 612.

74 See Jenée Desmond-Harris, *To Understand the Women’s March on Washington, You Need to Understand Intersectional Feminism*, *VOX NEWS* (Jan. 21, 2017), <https://www.vox.com/identities/2017/1/17/14267766/womens-march-on-washington-inauguration-trump-feminism-intersectionality-race-class>.

75 See Chung, *supra* note 3.

76 See generally Victor Ray, *Trump Calls Critical Race Theory ‘Un-American.’ Let’s Review.*, *WASH. POST* (Oct. 2, 2020), <https://www.washingtonpost.com/nation/2020/10/02/critical-race-theory-101/>.

ideology of victimhood instead of focusing on the diverse experiences of womanhood. Women have more in common than their shared victimization by men; there is no ‘one-size fits all’ feminism.⁷⁷ The difficulty with building movements based on one label or factor is that all experiences are different. There are common elements and themes, but everyone’s identity interacts within their environment with unique results.

Legislators, public figures, and activists need to work to understand how their own identities play into their power. They frequently police language and goals of underrepresented groups instead of including them in places of power. Movement lawyering, which centers impacted communities as coalition leaders, is an example of how the power dynamic can be shifted.⁷⁸ Both academic and legal institutions ignore power dynamics inherent in their respective systems. Community organizers and grassroots leaders strategize in terms of power, not policy. Movement lawyering can make legitimate and effectual change by disrupting those harmful power structures.⁷⁹ This approach requires a significant number of lawyers to “liberate themselves from the constraints imposed by conventional legal training” as well as to “embrace grassroots power-building as a core function of their practice.”⁸⁰ That is a heavy ask, but an essential one in shifting the narratives of social change. No one is purely objective, and the law needs to acknowledge there is value in being conscious of one’s own biases, privileges, and struggles. Positionality has a role to play in every profession and in every classroom.

⁷⁷ Harris, *supra* note 48 at 613 (“[T]he story of women as passive victims denies the ability of women to shape their own lives. . . It also may thwart their abilities. . . reluctant to look farther than commonality for fear of jeopardizing the comfort of shared experience, women who rely on their victimization to define themselves may be reluctant to let it go and create their own self-definitions.”).

⁷⁸ See generally Alexi N. Freeman & Jim Freeman, *It’s About Power, Not Policy: Movement Lawyering for Large Scale Social Change*, 23 CLINICAL L. REV. 147 (2016).

⁷⁹ *Id.* at 150.

⁸⁰ *Id.* at 151.

IV. CONCLUSION

Until we create a system with complete and unsuppressed democratic participation of all communities, those in power must use their own privilege to boost others into power. VAWA began as a monolithic approach to a multifaceted problem but has increasingly evolved to include an intersectional and post-essentialism feminist framework. Not only should politicians take positionality into account, the largest demographic who voted for a white supremacist, white women, must learn about interest convergence, privilege, and intersectionality and then call each other in. VAWA has a long way to go to adequately address gender-based violence without contributing to hyper-incarceration and government-based violence. We will not get there without hard conversations in places of power and privilege, from law school classrooms to Congress.